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UNIVERSITY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4, JOHN DOE 5, JOHN DOE 6,
JOHN DOE 7, JOHN DOE 8, JOHN DOE 9,
JOHN DOE 10, JOHN DOE 11, JOHN DOE
12, JOHN DOE 13, and JOHN DOE 14
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, THE UNIVERSITY OF
SAN FRANCISCO, ANTHONY N. (AKA
NINO) GIARRATANO, and TROY
NAKAMURA,

Defendants.

Case No. 3:22-cv-01559-LB

**DEFENDANT UNIVERSITY OF SAN
FRANCISCO'S SUPPLEMENTAL
STATEMENT IN SUPPORT OF
SEALING REQUESTS (ECF Nos. 273,
301)**

*[Declaration of Jonathan M. Baum Filed
Concurrently herewith]*

Judge: Hon. Laurel Beeler

Trial Date: None Set

Pursuant to the Court’s March 6, 2025 Order (ECF No. 314), Defendant University of San Francisco (“USF”) hereby submits this Supplemental Statement in Support of Sealing Requests (ECF Nos. 273, 301).

I. Legal Standard

Where, as here, documents are filed under seal when attached to a non-dispositive motion, courts have “carved out an exception to the presumption of access”—“the usual presumption of the public’s right of access is rebutted.” *In re Midland Nat. Life Ins. Co. Annuity Sales Pracs. Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012). Courts in the Ninth Circuit apply a “compelling reasons” standard for sealing requests made in connection with motions for class certification. *E.g.*, *Huntsman v. Sw. Airlines Co.*, No. 19-CV-00083-PJH, 2021 WL 391300, at *16 (N.D. Cal. Feb. 3, 2021); *A.B. v. Pac. Fertility Ctr.*, 441 F. Supp. 3d 902, 906 (N.D. Cal. 2020); *Yan Mei Zheng v. Toyota Motor Corp.*, 2019 WL 6841324, at *1 (N.D. Cal. Dec. 16, 2019) (collecting cases); *Racies v. Quincy Bioscience, LLC*, No. 15-CV-00292-HSG, 2017 WL 6405612, at *2 (N.D. Cal. Dec. 15, 2017).

In the Ninth Circuit, “[w]hat constitutes a ‘compelling reason’ is best left to the sound discretion of the trial court.” *Center For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). “Examples include when a court record might be used to gratify private spite or promote public scandal, to circulate ‘libelous’ statements, or ‘as sources of business information that might harm a litigant’s competitive standing.’” *Id.* In particular, “[i]nvasion of a third party’s privacy interest is a ‘compelling reason’ for filing a document under seal.” *Cat Coven LLC v. Shein Fashion Grp., Inc.*, 2019 WL 10856813, at *1 (C.D. Cal. Dec. 20, 2019) (citing *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-cv-03844-JST, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3, 2015)); *see United States v. Kwok Cheung Chow*, No. 14CR00196CRBJCS, 2015 WL 5094744, at *4 (N.D. Cal. Aug. 28, 2015).

II. There are compelling reasons to justify sealing redacted portions of Exhibits 1, 6-12, 16-19, 21-34, and 36 in support of the sealing request filed as ECF No. 273

Plaintiffs filed an administrative motion to consider whether another party’s material should be sealed for Exhibits 1-2, 6-19, 21-34, 36-37, and 39 to Plaintiffs’ Motion for Class

1 Certification (ECF No. 265). These exhibits contained documents marked as “Confidential” or
 2 “Highly Confidential” by Defendants USF, Anthony N. Giarratano, or Troy Nakamura under the
 3 Stipulate Protective Order entered in this case.

4 As an initial matter, USF withdraws its request to seal as to Exhibits 2, 13-15, 37, and 39
 5 and quotes on pages 16-17, 20, 23-24, and 26 of Exhibit 1.

6 With respect to the remaining exhibits, USF requests the Court keep sealed the redacted
 7 portions of Exhibits 6, 9, and 11. These exhibits contain communications submitted to USF
 8 personnel by third parties with the expectation of privacy and personal identifying information of
 9 third parties. The redactions protect personal identifying information of the third parties and
 10 sensitive information submitted by the third parties to USF in confidence. Publication would cause
 11 a serious invasion of privacy for third parties and will infringe upon their expectation of privacy.
 12 *Cat Coven LLC*, 2019 WL 10856813, at *1; *Kwok Cheung Chow*, 2015 WL 5094744, at *4; *see*
 13 *Icon-IP Pty Ltd., Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3, 2015).

14 USF also requests the Court keep sealed the redacted portions of Exhibit 7. This exhibit
 15 contains a communication submitted to USF personnel by a third party with the expectation of
 16 privacy, and it contains the personal identifying information of third parties. This exhibit also
 17 includes private medical information of a third party, which alone is sufficient to maintain the
 18 redacted portions under seal. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir.
 19 2003) (finding that even if not sealed in their entirety, third-party medical and personnel records
 20 should be redacted, namely identifying information of third parties, to protect third party privacy
 21 interests). The redactions protect personal identifying information of the third party and sensitive
 22 information submitted by the third party to USF in confidence. Public disclosure of this
 23 information will undermine a third party’s constitutional and statutory right to privacy. *Cat Coven*
 24 *LLC*, 2019 WL 10856813, at *1; *Kwok Cheung Chow*, 2015 WL 5094744, at *4; *see Icon-IP Pty*
 25 *Ltd., Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3, 2015).

26 Similarly, the redacted portions of Exhibits 8, 10, 17, 19, 21-23, 25, 29, 31, and 32 should
 27 remain sealed. These exhibits contain the names and personal identifying information of Plaintiffs,
 28 which Plaintiffs have sought to maintain as confidential throughout this proceeding and which the

1 Court ordered to remain anonymous.¹ (*See* ECF No. 63 at 5.) Exhibits 8, 10, 17, 19, 21-23, 25, 29,
 2 31, and 32 also contain communications submitted to USF personnel by third parties with the
 3 expectation of privacy and contain personal identifying information of third parties. The redactions
 4 protect personal identifying information of the third parties and sensitive information submitted
 5 by the third parties to USF in confidence. Publication would cause a serious invasion of privacy
 6 for third parties. *Cat Coven LLC*, 2019 WL 10856813, at *1; *Kwok Cheung Chow*, 2015 WL
 7 5094744, at *4; *see Icon-IP Pty Ltd., Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3, 2015).

8 Additionally, Exhibit 12 contains personal identifying information of a third party—a
 9 private cell phone number—and thus, should remain under seal. Publication would cause a serious
 10 invasion of privacy for the third party. *Cat Coven LLC*, 2019 WL 10856813, at *1; *Kwok Cheung*
 11 *Chow*, 2015 WL 5094744, at *4; *see Icon-IP Pty Ltd., Inc.*, 2015 WL 984121, at *2 (N.D. Cal.
 12 Mar. 3, 2015).

13 USF requests the Court keep sealed Exhibits 16, 18, and 36 and the quotes on pages 9 and
 14 14 of Exhibit 1, which contain excerpts from transcripts of the proceedings in the arbitration
 15 between USF and Defendant Anthony N. Giarratano and documents filed during the same
 16 proceedings. The arbitrator designated the proceedings and underlying exhibits, briefings, and
 17 testimony confidential, and in reliance on this order, the parties disclosed information with the
 18 understanding that the hearing and materials would remain confidential. Plaintiffs should not be
 19 able to benefit in the public eye from the unauthorized disclosure of information in these exhibits,
 20 particularly when such disclosure is one-sided and misrepresents the nature of the arbitration as a
 21 whole.

22 USF requests the Court keep sealed the redacted portions of Exhibits 26 and 30. Exhibit
 23 26 contains non-public financial information of a party, and Exhibit 30 contains non-public
 24

25 ¹ There is a presumption of transparency in litigation, and the Ninth Circuit allows parties to use
 26 pseudonyms only in “special circumstances when the party’s need for anonymity outweighs
 27 prejudice to the opposing party and the public’s interest in knowing the party’s identity.” *Does I*
 28 *thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). Despite alleging
 sexual misconduct, Does 1, 2, and 3 testified that they never experienced inappropriate physical
 sexual touching while at USF. The Court has similarly held that this case does not concern
 “physical sexual abuse.” (ECF No. 88 at 22, 24-25.) Plaintiffs’ shielding of their identities
 thwarts the public’s interest in transparency.

1 financial information that would reveal USF's finances and business decision-making. *Fed. Trade*
 2 *Comm'n v. Microsoft Corp.*, No. 23-CV-02880-JSC, 2023 WL 5186252, at *5 (N.D. Cal. Aug. 11,
 3 2023) (finding compelling reasons to seal "[n]on-public sensitive financial information").

4 There is a compelling reason to seal the redacted portions of Exhibits 24, 27, 28, 33, and
 5 34, as they contain personal identifying information of third parties. Publication would cause a
 6 serious invasion of privacy for the third parties and will interfere with a third party's constitutional
 7 and statutory right to privacy. *Cat Coven LLC*, 2019 WL 10856813, at *1; *Kwok Cheung Chow*,
 8 2015 WL 5094744, at *4; *see Icon-IP Pty Ltd., Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3,
 9 2015).

10 The Court should keep sealed all quotes from redacted materials in Exhibits 6-12, 16-19,
 11 21-34, and 36 contained in Plaintiffs' brief in support of Plaintiff's Motion for Class Certification.
 12 USF withdraws its request to seal quotes from Exhibits 2, 13-15, 37, and 39 in the brief.

13 **III. Compelling reasons exist to keep sealed the redacted portions of Exhibits 2-12, 14,**
 14 **and 16-20 to the Selbin Declaration and Exhibit A to the Fegan Declaration in**
 15 **support of the sealing request filed as ECF No. 301**

16 Plaintiffs filed an administrative motion to consider whether another party's material
 17 should be sealed for the following documents filed in support of Plaintiffs' Reply in Support of
 18 Plaintiffs' Motion for Class Certification (ECF No. 299): (i) Exhibits 2-12, 14, and 16-19 to
 19 Plaintiffs' Declaration of Jonathan D. Selbin in Support of Plaintiffs' Reply in Support of
 20 Plaintiffs' Motion for Class Certification ("Selbin Declaration"); (ii) portions of Exhibit 20 to the
 21 Selbin Declaration, the Supplemental Expert Report of Robert Boland, J.D.; (iii) Exhibit A to
 22 Plaintiffs' Declaration of Elizabeth A. Fegan in Support of Plaintiffs' Reply in Support of
 23 Plaintiffs' Motion for Class Certification ("Fegan Declaration"); (iv) portions of Plaintiffs' Reply
 24 in Support of Plaintiffs' Motion for Class Certification; and (v) portions of the Fegan Declaration.
 25 These exhibits contained documents marked as "Confidential" or "Highly Confidential" by
 26 Defendants USF, Anthony N. Giarratano, or Troy Nakamura under the Stipulate Protective Order
 27 entered in this case.

28 USF withdraws its request to seal the quote in the last sentence of paragraph 32 of Exhibit
 20 to the Selbin Declaration.

1 USF requests the Court keep sealed the redacted portions of Exhibit 2 to the Selbin
 2 Declaration. This exhibit contains the personal identifying information of third parties. Public
 3 disclosure will invade these third parties' right to privacy, and as such, the materials should remain
 4 under seal. *Cat Coven LLC*, 2019 WL 10856813, at *1; *Kwok Cheung Chow*, 2015 WL 5094744,
 5 at *4; *see Icon-IP Pty Ltd., Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3, 2015).

6 Exhibits 3-12, 14, and 16 to the Selbin Declaration, quotes on pages 6-12 of Exhibit 20 to
 7 the Selbin Declaration, and Exhibit A to the Fegan Declaration contain excerpts from transcripts
 8 of the proceedings in the arbitration between USF and Defendant Anthony N. Giarratano and
 9 documents filed during the same proceedings. The arbitrator designated the proceedings and
 10 underlying exhibits, briefings, and testimony confidential, and in reliance on this order, the parties
 11 disclosed information with the understanding that the hearing and materials would remain
 12 confidential. In addition, Exhibit 14 to the Selbin Declaration and Exhibit A to the Fegan
 13 Declaration contain the testimony of Doe 7. These exhibits should remain sealed in their entirety
 14 because they contain Doe 7's name and other personal identifiable information, which is
 15 information that Plaintiffs have sought to maintain as confidential throughout this proceeding and
 16 which the Court ordered to remain anonymous.² (*See* ECF No. 63 at 5.)

17 USF requests the Court keep sealed the redacted portions of Exhibits 17-19 to the Selbin
 18 Declaration. These exhibits contain the names of Plaintiffs, which Plaintiffs have sought to
 19 maintain as confidential throughout this proceeding and which the Court ordered to remain
 20 anonymous.³ (*See* ECF No. 63 at 5.) These exhibits also contain the personal identifying
 21 information of third parties. The redactions protect personal identifying information of the third
 22 parties. Publication would cause a serious invasion of privacy for third parties. *Cat Coven LLC*,
 23 2019 WL 10856813, at *1; *Kwok Cheung Chow*, 2015 WL 5094744, at *4; *see Icon-IP Pty Ltd.,*
 24 *Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 3, 2015). These exhibits contain non-public financial
 25 information that would reveal USF's finances and business decision-making. *Fed. Trade Comm'n*,
 26
 27

28 ² Reference Footnote 1 *supra*.

³ Reference Footnote 1 *supra*.

2023 WL 5186252, at *5 (finding compelling reasons to seal “[n]on-public sensitive financial information”).

USF, accordingly, requests the Court keep sealed all quotes from redacted materials in Exhibits 2-12, 14, and 16-20 to the Selbin Declaration and Exhibit A to the Fegan Declaration in Plaintiffs’ brief in support of Plaintiffs’ Reply in Support of Plaintiffs’ Motion for Class Certification and the Fegan Declaration.

IV. Conclusion

For the foregoing reasons, USF respectfully requests that the Court keep sealed the exhibits described above.

Dated: March 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receive CM/ECF notifications.

By: /s/ Jonathan M. Baum
Jonathan M. Baum